

SENATE BILL No. 136

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-12.

Synopsis: Collective bargaining for public safety employees. Allows the police officers and firefighters of a county, city, town, or township to bargain collectively with the employer through an exclusive representative. Specifies the rights and duties of public safety employees and employers in collective bargaining. Requires the education employment relations board to implement and administer collective bargaining law. Provides for judicial review of complaints, mediation, and arbitration. Prohibits lockouts and strikes.

Effective: July 1, 2004.

Craycraft

January 6, 2004, read first time and referred to Committee on Pensions and Labor.

C
o
p
y



Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 136

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2004]:
4 **ARTICLE 12. COLLECTIVE BARGAINING FOR PUBLIC**
5 **SAFETY EMPLOYEES**
6 **Chapter 1. Applicability**
7 **Sec. 1. Except as otherwise provided, this article applies to all**
8 **units.**
9 **Chapter 2. Definitions**
10 **Sec. 1. The definitions in this chapter apply throughout this**
11 **article.**
12 **Sec. 2. "Bargain collectively" means to perform the obligation**
13 **of an employer through the employer's executive or designee and**
14 **the designee of the exclusive representative to do the following:**
15 **(1) Meet at reasonable times, including meetings before the**
16 **budget making process.**
17 **(2) Negotiate in good faith concerning the following:**

2004

IN 136—LS 6320/DI 96+



C
o
p
y

(A) Salaries.

(B) Wages.

(C) Hours.

(D) Salary and wage related fringe benefits.

(E) All other terms and conditions of employment, including health and safety conditions.

(3) Execute a written contract incorporating an agreement if a written contract is requested by either party.

Sec. 3. "Bargaining unit" means the full-time employees of a police or fire department who have completed the training required by IC 5-2-1-9(b), IC 5-2-1-9(d), or IC 5-2-1-9(e). The term does not include a person in an upper level policy making position (as defined in IC 36-8-1-12), except a person in an upper level policy making position included in an agreement in effect on June 30, 2004.

Sec. 4. "Board" refers to the Indiana education employment relations board created by IC 20-7.5-1-9.

Sec. 5. "Complainant" means an employer, an employee, an employee organization, or an exclusive representative that files a complaint with the board under IC 36-12-4.

Sec. 6. "Employee" means a person who is a member of a bargaining unit.

Sec. 7. "Employee organization" means an organization in which employees participate and that exists to deal with an employer concerning any of the following:

- (1) Grievances.
- (2) Labor disputes.
- (3) Wages.
- (4) Rates of pay.
- (5) Hours of employment.
- (6) Employment conditions.

Sec. 8. "Employer" means either of the following:

- (1) A unit to which this article applies.
- (2) A person designated by a unit to which this article applies to act in the unit's interests in dealing with employees.

Sec. 9. "Exclusive representative" means an employee organization that is:

- (1) certified under IC 36-12-3 by the board; or
- (2) recognized by the employer as the exclusive representative of the employees in a bargaining unit.

Sec. 10. "Respondent" means a person against whom a complainant files a complaint under IC 36-12-4.

**C
o
p
y**



Sec. 11. "Strike" includes concerted:

- (1) willful absence from the employee's position;
- (2) stoppage of work; or
- (3) abstinence in whole or in part from the full and proper performance of the duties of employment.

Chapter 3. Employee Organizations

Sec. 1. The board shall implement and administer this chapter and IC 36-12-4 through IC 36-12-5. To do so, the board may exercise the powers granted to the board under IC 20-7.5-1-9.

Sec. 2. Employees may do the following:

- (1) Form, join, or participate in employee organizations.
- (2) Participate in collective bargaining with the employer through representatives of the employees' choosing.
- (3) Engage in other activities, individually or in concert, to establish, maintain, or improve the following:
 - (A) Salaries.
 - (B) Wages.
 - (C) Hours.
 - (D) Salary and wage related fringe benefits.
 - (E) All other terms and conditions of employment, including health and safety conditions.

Sec. 3. An employer shall manage and direct the employer's operations and activities to the full extent authorized by law.

Sec. 4. An employer may do the following:

- (1) Direct the work of an employee, except where otherwise provided by law.
- (2) Establish policy.
- (3) Hire, promote, demote, transfer, assign, and retain an employee in accordance with law and collective bargaining agreements.
- (4) Suspend or discharge an employee in accordance with law.
- (5) Maintain the efficiency of governmental operations.
- (6) Take action necessary to carry out the missions of the police department and the fire department.
- (7) Protect the fiscal soundness and assure the continuation of vital public safety services.
- (8) Take actions necessary to carry out the employer's responsibilities in emergencies, including any of the following:
 - (A) Riot.
 - (B) Military action.
 - (C) Natural disaster.
 - (D) Civil disorder.

**C
o
p
y**



1 **Sec. 5.** In accordance with rules adopted by the board, the board
2 shall investigate a petition filed with the board by:

3 (1) an employee organization alleging that thirty percent
4 (30%) of the employees in the appropriate bargaining unit
5 wish to be represented for collective bargaining purposes by
6 an exclusive representative;

7 (2) an employer alleging that at least one (1) employee
8 organization has presented a claim to be recognized as the
9 exclusive representative in an appropriate bargaining unit; or

10 (3) an employee or a group of employees alleging that thirty
11 percent (30%) of the employees assert that the designated
12 exclusive representative is no longer the representative of the
13 majority of employees in the bargaining unit.

14 **Sec. 6.** If the board has reasonable cause to believe that a
15 question of representation exists, the board shall conduct a hearing
16 not later than thirty (30) days after a petition is filed with the
17 board. If the board finds that a question of representation exists,
18 the board shall do the following:

19 (1) Direct an election by secret ballot not later than thirty (30)
20 days after the hearing.

21 (2) Certify the results not later than ten (10) days after the
22 election.

23 **Sec. 7.** If the parties referred to in section 5 of this chapter waive
24 the hearing, the board is not required to conduct a hearing under
25 section 6 of this chapter before a consent election.

26 **Sec. 8.** The board shall determine who is eligible to vote in an
27 election directed under section 6 of this chapter and shall establish
28 rules governing the election, subject to the following conditions:

29 (1) To be placed on the ballot, an employee organization must
30 be designated by more than ten percent (10%) of the
31 employees in the unit.

32 (2) If none of the choices on the ballot receives a majority in
33 an election but a majority of all votes cast are for
34 representation by some employee organization, the board
35 shall conduct a runoff election.

36 (3) An employee organization that receives the majority of the
37 votes cast in an election shall be certified by the board as the
38 exclusive representative.

39 **Sec. 9.** An election may not be directed in a bargaining unit or
40 in a subdivision of a bargaining unit within which a valid election
41 has been held in the preceding twelve (12) months.

42 **Sec. 10.** Notwithstanding sections 5 through 8 of this chapter, an

C
O
P
Y



1 employer shall recognize a particular employee organization as the
 2 exclusive representative of the employees within an appropriate
 3 bargaining unit if the employee organization presents to the
 4 employer evidence that the employee organization represents a
 5 majority of the employees within the bargaining unit, unless an
 6 employee organization or a group of employees representing
 7 employees within the bargaining unit files a written objection to
 8 recognition with the employer or the board.

9 **Sec. 11. If:**

10 (1) an employee organization, under section 10 of this chapter,
 11 provides an employer with evidence that the employee
 12 organization represents a majority of the employees within an
 13 appropriate bargaining unit; and

14 (2) no written objection to the recognition of the employee
 15 organization as the exclusive representative of the employees
 16 within the bargaining unit is filed under section 10 of this
 17 chapter by another employee organization or a group of
 18 employees representing the employees within the bargaining
 19 unit;

20 the board is not required to hold a hearing or to direct an election
 21 on the question of whether the employee organization referred to
 22 in subdivision (1) shall be recognized as the exclusive
 23 representative of the employees within the bargaining unit.

24 **Sec. 12. Before recognizing an employee organization as an**
 25 **exclusive representative under section 10 of this chapter, the**
 26 **employer must post a written public notice of the employer's**
 27 **intention to recognize the employee organization as the exclusive**
 28 **representative of the employees within the bargaining unit. The**
 29 **notice must be posted for at least thirty (30) days immediately**
 30 **preceding the recognition in a place where it will be seen by the**
 31 **employees within the bargaining unit.**

32 **Sec. 13. In a case in which:**

33 (1) there is a historical pattern of recognition; and

34 (2) the employer has recognized an employee organization as
 35 the sole and exclusive bargaining agent for an existing
 36 bargaining unit;

37 the board shall find that the employees in the bargaining unit are
 38 represented by the employee organization and recognize the
 39 employee organization as the exclusive representative.

40 **Sec. 14. A determination made under this chapter that an**
 41 **employee organization has been chosen as the exclusive**
 42 **representative by a majority of the employees in an appropriate**

C
O
P
Y



bargaining unit is subject to judicial review under the same procedure, time limits, and other requirements as are set forth in IC 36-12-4-12 through IC 36-12-4-22 for review of an order of the board. The record of the board's determination of the appropriate bargaining unit and the exclusive representative may be a part of the transcript of a proceeding under this section.

Sec. 15. An employer, upon receipt of a written authorization from an employee subject to this chapter, shall:

- (1) deduct from the pay of the employee the dues, fees, or assessments designated or certified by the appropriate officer of an employee organization; and
- (2) remit those amounts to the employee organization.

Sec. 16. A collective bargaining agreement with an employee organization that is recognized as an exclusive representative under this chapter may include a provision requiring an employee who is covered by the collective bargaining agreement but is not a member of the employee organization to pay a proportionate share of the costs of the collective bargaining process, contract administration, and matters affecting wages, hours, and conditions of employment. This proportionate share may not exceed the amount of dues uniformly required of members of the employee organization.

Sec. 17. An employee organization referred to in section 16 of this chapter shall certify to an employer the amount constituting each nonmember employee's proportionate share of the costs of representation. The employer shall deduct the proportionate share payment from the earnings of a nonmember employee and pay the amount to the employee organization.

Sec. 18. Only the exclusive representative of the employees within a bargaining unit may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of any of the following:

- (1) Labor organization dues.
- (2) Fair share payment.
- (3) Initiation fees.
- (4) Assessments.

Sec. 19. Except as provided in section 17 of this chapter, deductions for dues, fees, or assessments may be made only upon an employee's written authorization and shall be continued until:

- (1) revoked in writing; or
- (2) the termination date of the applicable collective bargaining agreement.

**C
o
p
y**



1 **Sec. 20. A collective bargaining agreement providing for an**
 2 **employee who is not a member of the employee organization**
 3 **recognized as the exclusive representative to pay a proportionate**
 4 **share assessment must safeguard the right of nonassociation based**
 5 **on bona fide religious tenets of an employee. An affected employee**
 6 **may be required to pay an amount equal to the employee's**
 7 **proportionate share, determined under a lawful proportionate**
 8 **share provision, to a nonreligious charitable organization agreed**
 9 **on by the employee and the exclusive representative to which the**
 10 **employee would otherwise pay the dues, fees, or assessments.**

11 **Sec. 21. If an affected employee referred to in section 20 of this**
 12 **chapter and the exclusive representative are unable to agree on a**
 13 **nonreligious charitable organization for payment under section 20**
 14 **of this chapter, the board may establish an approved list of**
 15 **charitable organizations to which the payments may be made.**

16 **Sec. 22. It is an unfair labor practice for an employer to do any**
 17 **of the following:**

18 (1) **Interfere with, restrain, or coerce an employee in the**
 19 **exercise of the rights guaranteed in this chapter or IC 36-12-4**
 20 **through IC 36-12-5.**

21 (2) **Dominate, interfere with, or assist in the formation or**
 22 **administration of an employee organization or contribute**
 23 **financial or other support to an employee organization.**

24 (3) **Discriminate in regard to:**

25 (A) **hiring practices;**

26 (B) **tenure of employment; or**

27 (C) **a term or condition of employment;**

28 **to encourage or discourage membership in an employee**
 29 **organization.**

30 (4) **Discharge or otherwise discriminate against an employee**
 31 **because that employee has:**

32 (A) **filed a complaint, an affidavit, or a petition; or**

33 (B) **given information or testimony under this chapter or**
 34 **IC 36-12-4.**

35 (5) **Refuse to bargain collectively in good faith with an**
 36 **exclusive representative concerning the following:**

37 (A) **Wages, including rates of pay.**

38 (B) **Salaries.**

39 (C) **Hours.**

40 (D) **Working conditions.**

41 (E) **Any other terms or conditions of employment.**

42 (6) **Fail or refuse to comply with this chapter or IC 36-12-4**

C
O
P
Y



through IC 36-12-6.

Sec. 23. It is an unfair labor practice for an employee organization to do any of the following:

(1) Interfere with, restrain, or coerce:

(A) an employee in the exercise of the rights guaranteed in this chapter or IC 36-12-4 through IC 36-12-6; or

(B) an employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.

(2) Cause or attempt to cause an employer to discriminate against an employee contrary to section 22 of this chapter.

(3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.

(4) Engage in a strike.

(5) Fail to comply with this chapter or IC 36-12-4 through IC 36-12-6.

Sec. 24. It is not an unfair labor practice for an employer to confer with an employee without loss of time or pay by the employee during working hours.

Sec. 25. It is not an unfair labor practice for an employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

Chapter 4. Complaints

Sec. 1. (a) An employer, an employee, an employee organization, or an exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.

(b) The board shall serve a copy of the complaint on the respondent and notify the respondent of the date, time, and place of a hearing on the complaint.

Sec. 2. (a) The board shall hold a hearing on a complaint not less than five (5) days or more than thirty (30) days after the complaint is served on the respondent.

(b) A notice of a hearing may not be issued based on an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces.

Sec. 3. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the respondent would not be unfairly prejudiced by the amendment.

**C
o
p
y**



(b) The respondent shall file an answer to the original or amended complaint not later than the date set for the hearing. The complainant and the respondent are parties and are entitled to appear in person or otherwise give testimony at the hearing. The board may allow an interested person to intervene in the hearing and present testimony.

Sec. 4. The board is not bound by the rules of evidence in conducting a hearing under this chapter. Testimony received at a hearing shall be reduced to writing and filed with the board. After receiving the testimony, the board may take further testimony or hear arguments upon notice to the parties.

Sec. 5. (a) In a proceeding on a complaint under this chapter, the board shall make a determination based on a preponderance of evidence received.

(b) If the board determines that the respondent was or is engaged in an unfair labor practice, the board shall state the findings of fact and serve on the respondent an order:

- (1) that requires the respondent to cease the unfair labor practice and take affirmative action, including reinstatement of an employee with or without back pay, to carry out this chapter, IC 36-12-3, IC 36-12-5, or IC 36-12-6; and
- (2) that may further require the respondent to make reports showing the extent of the respondent's compliance with the order.

Sec. 6. If the board determines that a respondent:

- (1) did not engage in; or
- (2) is not engaging in;

an unfair labor practice, the board shall state the findings of fact and dismiss the complaint.

Sec. 7. A hearing may be conducted by:

- (1) a member of the board; or
- (2) a hearing examiner or an agency designated by the board;

instead of by the full board. However, after the hearing, the member, hearing examiner, or agency shall serve on the parties and file with the board proposed findings and a recommended order.

Sec. 8. If an exception is not filed by a party:

- (1) within twenty (20) days after service on the parties; or
- (2) within a period authorized by the board;

the recommended order filed under section 7 of this chapter becomes the order of the board.

Sec. 9. If an exception to a recommended order filed under

**C
O
P
Y**



1 section 7 of this chapter is filed, the full board shall grant review if
 2 the board determines that the exception raises a substantial issue
 3 of fact or law.

4 Sec. 10. If the board determines that an exception to a
 5 recommended order filed under section 7 of this chapter does not
 6 raise a substantial issue of fact or law, the recommended order
 7 becomes the order of the board.

8 Sec. 11. An order of the board under sections 8 and 10 of this
 9 chapter is a final order and binding on the parties to the complaint,
 10 subject to judicial review under sections 12 through 22 of this
 11 chapter.

12 Sec. 12. Not later than thirty (30) days after the board's:

13 (1) determination under IC 36-12-3-14; or

14 (2) determination and order under sections 5 and 6 of this
 15 chapter;

16 the board or the complainant may petition the circuit or superior
 17 court with jurisdiction in a county in which the unit is located for
 18 the enforcement of the board's determination and order and for
 19 appropriate relief.

20 Sec. 13. A party aggrieved by a determination under
 21 IC 36-12-3-14 or by the board's order under this chapter may
 22 petition the circuit or superior court for a review of the order and
 23 for appropriate relief. If a petition is not filed within the thirty (30)
 24 day period computed under:

25 (1) section 12(1) of this chapter; or

26 (2) section 12(2) of this chapter;

27 the order or determination may not be reviewed.

28 Sec. 14. The commencement of proceedings after the filing of a
 29 petition under section 13 of this chapter does not, unless
 30 specifically ordered by the court, operate as a stay of the board's
 31 order or a determination made under IC 36-12-3-13.

32 Sec. 15. After a petition is filed under section 13 of this chapter,
 33 the court shall have notice of the petition served on the parties and
 34 send a copy to the board.

35 Sec. 16. In a proceeding on a petition filed under section 13 of
 36 this chapter, an objection that was not made at the hearing
 37 conducted under section 2 of this chapter may not be considered by
 38 the court, unless the failure to make the objection is excused
 39 because of extraordinary circumstances.

40 Sec. 17. If either party in a proceeding based on a petition filed
 41 under section 13 of this chapter applies to the court for leave to
 42 introduce additional evidence and shows to the satisfaction of the

C
O
P
Y



1 court that:

2 (1) the additional evidence is material; and

3 (2) there were reasonable grounds for the failure to introduce
4 the evidence in a hearing conducted under section 2 of this
5 chapter;

6 the court may order the additional evidence to be taken by the
7 board and made a part of the record.

8 Sec. 18. After a court orders the board to make additional
9 evidence a part of the record under section 17 of this chapter, the
10 board:

11 (1) may modify the findings of fact by reason of the additional
12 evidence; and

13 (2) shall file any modified findings and any recommendations
14 for a modification or setting aside of the original order with
15 the court.

16 Sec. 19. A party who petitions a court for review of an order of
17 the board under section 13 of this chapter must file a record of the
18 hearing, certified by the board, with the court. Until a record of the
19 hearing is filed, the board may, at any time upon reasonable notice,
20 modify or set aside all or part of a finding or an order made or
21 issued by the board.

22 Sec. 20. After the record of a hearing conducted under section
23 2 of this chapter is filed with the court under section 19 of this
24 chapter, the jurisdiction of the court to modify, set aside, or
25 enforce a board's order and to grant other appropriate relief is
26 exclusive, and the court's judgment and decree are final, subject to
27 review in accordance with the rules of court.

28 Sec. 21. Petitions filed under section 12 of this chapter shall be
29 heard not later than sixty (60) days after the petitions are docketed.
30 The petition takes precedence over all other civil matters except
31 matters of the same character docketed earlier.

32 Sec. 22. In a court's review of an order of the board under this
33 chapter, the original or modified findings of fact by the board with
34 respect to questions of fact, if supported by substantial evidence on
35 the record considered as a whole, are conclusive.

36 Chapter 5. Mediation and Arbitration

37 Sec. 1. Employers and employees shall bargain collectively. The
38 parties shall enter into a contract embodying the matters on which
39 the parties have agreed during the collective bargaining process.
40 A collective bargaining contract may be in effect for more than one
41 (1) year.

42 Sec. 2. A contract may not include provisions in conflict with

C
o
p
y



any of the following:

- (1) A right or benefit established by federal or state law.
- (2) Employee rights described in this article.
- (3) Employer rights described in this article.

Sec. 3. A contract entered into under section 1 of this chapter must contain a grievance resolution procedure that applies to all employees in the bargaining unit. This procedure must provide for the final and binding arbitration of disputes concerning the administration or interpretation of the contract. The arbitration provisions of the contract are subject to IC 34-57-1.

Sec. 4. Collective bargaining negotiations must begin by May 1 of a year in which a collective bargaining agreement is to expire. The parties shall inform the board of the results of collective bargaining.

Sec. 5. If the exclusive representative and the employer have not agreed on a contract forty-five (45) days after collective bargaining begins under section 4 of this chapter, either party may:

- (1) notify the board of the inability to reach an agreement; and
- (2) ask the board for mediation to begin.

Sec. 6. The board shall make a mediator available to the parties at the board's expense not later than seven (7) days after the board is notified under section 5 of this chapter.

Sec. 7. The mediator provided under section 6 of this chapter shall:

- (1) communicate with both the employer and the exclusive representative and;
- (2) aid the employer and exclusive representative in making a settlement so that the parties may enter into a contract.

Sec. 8. If a dispute has not been resolved within twenty-one (21) days after either party makes a request for mediation under section 5 of this chapter, the employer or exclusive representative shall, not later than seven (7) days after the expiration of the twenty-one (21) day period, submit a written request for arbitration to the board.

Sec. 9. Not later than ten (10) days after a request for arbitration must be filed under section 8 of this chapter, the employer and the exclusive representative shall:

- (1) each select a member of an arbitration panel; and
- (2) advise each other and the board of the selections made under this section.

Sec. 10. Not later than seven (7) days after the request of either

**C
o
p
y**



1 party for arbitration is submitted to the board under section 8 of
 2 this chapter, the board shall select from the permanent staff of
 3 factfinders or panel of part-time factfinders established under
 4 IC 20-7.5-1-13 five (5) persons as nominees to serve as impartial
 5 arbitrators on the arbitration panel. Not later than five (5) days
 6 after the selection, the parties shall each alternately strike the
 7 names of two (2) of the nominees, with the first person to request
 8 arbitration under section 8 of this chapter striking first.

9 Sec. 11. The member remaining after the striking process under
 10 section 10 of this chapter and the members selected by the
 11 employer and the exclusive representative under section 9 of this
 12 chapter constitute the arbitration panel. The panel member not
 13 struck under section 10 of this chapter is the chairperson of the
 14 arbitration panel.

15 Sec. 12. The chairperson of the arbitration panel shall schedule
 16 a hearing to begin not later than fifteen (15) days after the panel's
 17 membership is selected and shall give reasonable notice of the date,
 18 time, and place of the hearing to the parties. The hearing shall be
 19 held at a location the board considers appropriate. The
 20 chairperson shall preside over the hearing and take testimony.

21 Sec. 13. Oral or documentary evidence and other data
 22 considered relevant by the arbitration panel may be received in
 23 evidence at an arbitration hearing held under this chapter. The
 24 hearing shall be informal, and the rules of evidence do not apply.
 25 A verbatim record of the hearing must be made. The arbitrator
 26 shall arrange for the necessary recording service. Transcripts may
 27 be ordered at the expense of the party ordering the transcripts, but
 28 the transcripts are not necessary for a decision by the arbitration
 29 panel.

30 Sec. 14. If a member of an arbitration panel assembled under
 31 this chapter is a public officer or employee, the public officer or
 32 employee continues on the payroll of the employer without loss of
 33 pay.

34 Sec. 15. A hearing conducted by an arbitration panel under this
 35 chapter may be adjourned periodically but, unless otherwise
 36 agreed to by the parties, must be concluded not later than thirty
 37 (30) days after the date of commencement. Arbitration proceedings
 38 under this chapter may not be interrupted or terminated by an
 39 unfair labor practice charge filed by either party at any time.

40 Sec. 16. An arbitration panel may do the following:

41 (1) Administer oaths.

42 (2) Require the attendance of witnesses and the production of

C
O
P
Y



evidence considered material to a just determination of an issue in dispute.

Sec. 17. An arbitration panel may issue a subpoena to secure a witness and evidence under section 16(2) of this chapter.

Sec. 18. If:

(1) a person refuses to obey a subpoena or to be sworn or to testify; or

(2) a witness, a party, or an attorney is guilty of contempt at a hearing;

the arbitration panel may request the circuit or superior court where the hearing is held to issue an order.

Sec. 19. The failure to obey an order issued at the request of an arbitration panel under section 18 of this chapter may be punished by the court as contempt.

Sec. 20. Before an award is made, the chairperson of an arbitration panel may remand the dispute to the parties for further collective bargaining for a period not to exceed two (2) calendar weeks. If the dispute is remanded, the time provisions of this chapter are extended for a period equal to that of the remand. The chairperson of the arbitration panel shall notify the board of a remand under this section.

Sec. 21. Not later than the conclusion of a hearing held under section 12 of this chapter, the arbitration panel shall identify the economic issues in dispute and direct each party to submit to the arbitration panel and to each other, within the time limit the panel prescribes, each party's last offer of settlement on each economic issue. The determination of an arbitration panel is conclusive concerning the identification of issues that are in dispute and issues that are economic.

Sec. 22. (a) The arbitration panel shall make written findings of fact and adopt a written opinion not later than:

(1) thirty (30) days after the conclusion of a hearing; or

(2) the end of any further additional periods to which the parties agree.

(b) The arbitration panel shall mail a copy of the opinion to the parties, the representatives of the parties, and the board.

Sec. 23. (a) The arbitration panel shall adopt the last offer of settlement as to economic issues on an issue by issue basis that, in the arbitration panel's opinion, more nearly complies with the applicable factors prescribed in section 24 of this chapter.

(b) The findings, opinions, and order as to all other issues must also be based on the applicable factors prescribed in section 24 of

**C
o
p
y**



1 this chapter.

2 **Sec. 24. If there is no agreement between the parties, or if there**
 3 **is an agreement but the parties have begun negotiations or**
 4 **discussions for a new agreement or an amendment of the existing**
 5 **agreement and wage rates or other conditions of employment**
 6 **under the proposed new or amended agreement are in dispute, the**
 7 **arbitration panel shall base the arbitration panel's findings,**
 8 **opinions, and order on the following factors:**

- 9 (1) The lawful authority of the employer.
 10 (2) Stipulations of the parties.
 11 (3) The interests and welfare of the public and the financial
 12 ability of the employer to meet the costs.
 13 (4) Comparison of the wages, hours, and conditions of
 14 employment of the employees involved in the arbitration
 15 proceeding with the wages, hours, and conditions of
 16 employment of employees performing similar services and
 17 with other employees generally in comparable communities.
 18 (5) The average consumer prices for goods and services.
 19 (6) The overall compensation currently received by the
 20 employees, including the following:
 21 (A) Direct wage compensation, vacations, holidays, and
 22 other excused time.
 23 (B) Insurance, pension, medical, and hospitalization
 24 benefits.
 25 (C) The continuity and stability of employment.
 26 (7) Changes in any of the circumstances during the
 27 arbitration proceedings.
 28 (8) Other factors normally or traditionally taken into
 29 consideration in the determination of wages, hours, and
 30 conditions of employment through voluntary collective
 31 bargaining, mediation, factfinding, or arbitration between
 32 parties in public or private employment.

33 **Sec. 25. If an employer's fiscal year begins:**

- 34 (1) after the initiation of arbitration procedures under this
 35 chapter; and
 36 (2) before the arbitration decision or enforcement of the
 37 decision;

38 **this occurrence does not render a dispute moot or impair the**
 39 **jurisdiction or authority of the arbitration panel or the decision.**

40 **Sec. 26. Except as provided in section 27 of this chapter, an**
 41 **increase in rates of compensation awarded by an arbitration panel**
 42 **under this chapter is effective at the beginning of the employer's**

C
O
P
Y



fiscal year beginning on or after the date of the arbitration award.

Sec. 27. If a fiscal year begins after the initiation of arbitration procedures, section 26 of this chapter does not apply. However, an increase awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.

Sec. 28. The parties may, by stipulation, amend or modify an award of arbitration under this chapter.

Sec. 29. Upon petition by either the employer or the exclusive representative, an order of an arbitration panel under this chapter may be reviewed by the circuit or superior court with jurisdiction in the county in which the dispute arose or in which a majority of the affected employees reside. However, the only grounds on which the arbitration panel's order may be reviewed are that:

- (1) the arbitration panel was without authority or exceeded the arbitration panel's authority;
- (2) the order is arbitrary or capricious; or
- (3) the order was procured by fraud, collusion, or unlawful means.

Sec. 30. A petition for review of an order of an arbitration panel under section 29 of this chapter must be filed with the court not later than ninety (90) days after the issuance of the arbitration order. The pendency of the proceeding for review does not automatically stay the order of the arbitration panel.

Sec. 31. If the court, in proceedings on a petition for review of an order of an arbitration panel, finds the appeal or petition frivolous, the party against whom the final decision of the court is adverse shall pay reasonable attorney's fees and costs to the successful party.

Sec. 32. If the court's decision in a proceeding on a petition for review of an order of an arbitration panel affirms an award of money, the award, if retroactive, bears interest at the rate of twelve percent (12%) annually from the effective retroactive date.

Sec. 33. During the pendency of proceedings before an arbitration panel, currently applicable wages, hours, and other conditions of employment may not be changed by either party without the consent of the other. However, a party may consent to a change without prejudice to the party's rights or position under IC 36-12-3 or this chapter.

Sec. 34. An employee covered under IC 36-12-3 and this chapter may not withhold services.

Sec. 35. An employer may not lockout or prevent an employee from performing services.

**C
o
p
y**



1 **Sec. 36. (a) All terms decided on by an arbitration panel under**
 2 **this chapter must be included in an agreement to be submitted to**
 3 **the employer's legislative body for ratification and:**

4 **(1) adoption by ordinance if the unit is a county or**
 5 **municipality; or**

6 **(2) passage of a resolution if the unit is a township.**

7 **(b) The legislative body of the unit shall review each of the terms**
 8 **decided by an arbitration panel under this chapter.**

9 **Sec. 37. If the legislative body of a unit does not reject a term of**
 10 **an arbitration panel's decision by a vote of at least sixty percent**
 11 **(60%) of all the members of the body not later than twenty (20)**
 12 **days after the issuance of the decision, the term becomes a part of**
 13 **the collective bargaining agreement.**

14 **Sec. 38. If the legislative body of a unit rejects a term of the**
 15 **arbitration panel's decision, the legislative body must issue written**
 16 **reasons for the rejection of the term to the parties not later than**
 17 **twenty (20) days after the rejection. Written reasons must be**
 18 **issued under this section for each term that is rejected. The parties**
 19 **shall then return to the arbitration panel not later than thirty (30)**
 20 **days after the issuance of the reason for rejection for further**
 21 **proceedings and the issuance of a supplemental decision with**
 22 **respect to the rejected terms.**

23 **Sec. 39. A supplemental decision made under section 38 of this**
 24 **chapter by an arbitration panel or other decision maker selected**
 25 **by the parties must be submitted to the legislative body of a unit**
 26 **for ratification in accordance with sections 36 through 38 of this**
 27 **chapter.**

28 **Sec. 40. The voting requirements of section 37 of this chapter**
 29 **apply to all disputes submitted to arbitration, notwithstanding**
 30 **inconsistent voting requirements that may be contained in a**
 31 **collective bargaining agreement between the parties.**

32 **Sec. 41. The employer shall pay all reasonable costs of a**
 33 **supplemental proceeding under section 38 of this chapter,**
 34 **including the exclusive representative's reasonable attorney's fees,**
 35 **as established by the board.**

36 **Sec. 42. The employer and the exclusive representative may**
 37 **agree to submit unresolved disputes concerning wages, hours,**
 38 **terms, and conditions of employment to an alternative form of**
 39 **impass resolution without regard to this chapter.**

40 **Sec. 43. Except as provided in sections 6 and 41 of this chapter,**
 41 **the cost of procedures under this chapter as determined by the**
 42 **board shall be paid equally by the parties. The board shall**

C
O
P
Y



1 establish a complete procedure for the collection and payment of
2 the cost.

3 **Sec. 44.** After the exhaustion of an arbitration mandated by this
4 chapter or procedures mandated by a collective bargaining
5 agreement, a civil action for the violation of an agreement between
6 an employer and a labor organization representing employees may
7 be brought by either party to the agreement in the circuit or
8 superior court of a county in which:

9 (1) the employer transacts business; or

10 (2) the employer's principal office is located.

11 **Chapter 6. Miscellaneous Provisions**

12 **Sec. 1.** If a provision of this chapter, IC 36-12-3, IC 36-12-4, or
13 IC 36-12-5 conflicts with an Indiana statute, rule, or executive
14 order relating to wages, hours, and conditions of employment and
15 employment relations, this chapter, IC 36-12-3, IC 36-12-4, and
16 IC 36-12-5 prevail.

17 **Sec. 2.** This chapter, IC 36-12-3, IC 36-12-4, and IC 36-12-5
18 provide, for purposes of IC 36-1-3-6, the exclusive manner for a
19 unit to exercise the power to bargain collectively with the unit's
20 employees.

21 **Sec. 3.** An employee or exclusive representative may not
22 participate in a strike against an employer.

23 **Sec. 4.** An employee engaging in a strike is subject to discharge
24 by the employer, as provided in IC 36-8-3-4.

25 **Sec. 5.** An exclusive representative that engages in or sanctions
26 a strike loses the right to represent the employees for one (1) year
27 after the date of the action.

28 **Sec. 6.** An employer may not pay an employee for days during
29 which the employee was engaged in a strike.

30 **Chapter 7. Other Collective Bargaining Provisions in Title 36**

31 **Sec. 1.** This chapter contains a list of references to other
32 provisions within this title that concern collective bargaining.

33 **Sec. 2.** A collective bargaining agreement concerning county
34 police officers in a county with a population of more than fifty
35 thousand (50,000) is governed by IC 36-8-10-10.

36 **Sec. 3.** IC 36-8-10-23 controls cost of living adjustments for
37 disabled or retired employee beneficiaries of a sheriff's department
38 when a county's fiscal body has adopted the provisions of
39 IC 36-8-10-23.

40 **Sec. 4.** Collective bargaining for employees of regional
41 transportation authorities and public transportation agency
42 employees affected by the actions of a regional transportation

C
o
p
y



1 authority is governed by IC 36-9-3-21, IC 36-9-3-22, IC 36-9-3-23,
 2 IC 36-9-3-24, IC 36-9-3-25, and IC 36-9-3-27.
 3 **Sec. 5. Collective bargaining for employees of urban mass**
 4 **transportation systems and public transportation corporations is**
 5 **governed by IC 36-9-4-37 and IC 36-9-4-41.**
 6 SECTION 2. [EFFECTIVE JULY 1, 2004] (a) This act does not:
 7 (1) apply to or abrogate a contract or an agreement in effect
 8 on June 30, 2004; or
 9 (2) preclude arbitration on a provision in a contract or
 10 agreement referred to in subdivision (1).
 11 (b) This SECTION expires July 1, 2007.

C
o
p
y

